



April 4th, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554
13 PAGES TOTAL
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CC DOCKET #S 02-06 & 96-45

REQUEST FOR REVIEW

To Whom It May Concern:

Callisburg ISD (Billed Entity Number 140927) is petitioning the Federal Communications Commission for a Request for Review of the decision of the Universal Service Administrative Company (USAC).

On February 9th, 2011 Callisburg ISD received two "Notification of Commitment Adjustment Letters" all related to the same issue, gifts that were received from the district by their service provider, Trillion Partners, Inc (Trillion). We are appealing USAC's notification for the following application numbers and Funding Request Numbers (FRNs):

Application Number	FRN	Commitment Adjustment Amount
446653	1230744	\$50,052.60
598748	1651788	\$53,902.10

Both Commitment Adjustment Letters state the reason for the adjustment as:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicated that prior to/throughout your contractual relationship with the service provider listed on the FRN, you were offered and accepted gifts, meals, gratuities or

entertainment from the service provider, which resulted in a competitive bidding process that was no longer fair and open.

We can only assume that the “thorough investigation” USAC refers to is referencing inquiries on other applications for Callisburg. USAC made these exact same allegations in an “Intent to Deny” letter (“Attachment A”) sent to Callisburg on 6/15/2010 (sent by Pina Portonova, this letter referenced Application # 662878, funding year 2009 and Application # 721400, funding year 2010). In Callisburg’s response letter (dated 6/25/2010) to the “Intent to Deny” letter, Don Metzler, Director of Information Services pointed out that no one at the district who had any purchasing (or technology planning authority) received anything of value from Trillion. After reviewing Mr. Metzler’s response, USAC declined to pursue those allegations. Callisburg and its consultant, Mr. Chris Webber, are at a loss as to why USAC feels those allegations are again valid, without presenting any new evidence, for different funding years. The relevant text from Mr. Metzler’s letter (a full copy is provided as “Attachment B”) is as follows:

The first issue (the first bullet point in the letter) deals with two meals attended by Jeff Threadgill on February 5, 2008 and May 2, 2008. Mr. Threadgill did attend these two meetings and we agree that he did receive these meals. The USAC letter states, “...based on this information, it appears that you did not conduct a fair and open competitive bidding process.” Regardless of the issues discussed during those two meals, the receipts provided by Trillion shows that the two meals totaled (per-person) \$72.44. We absolutely disagree that such a relatively small amount in any way influenced our competitive bidding process.

In addition, we take issue with the inherent assumptions that Mr. Threadgill has control over the selection of a service provider to provide goods or services that were posted in the Form 470 referenced above and that conversations about the upcoming posting of the Form 470 occurred.

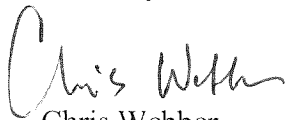
Mr. Threadgill serves the district as the Network Manager. He is not the person who makes final decisions with regards to awarding contracts. Mr. Donald L. Metzler controls the technology budget, scores bids received as the result of the Form 470 and makes final recommendations to the Superintendent of Schools. Mr. Metzler was listed as the contact person on the Form 470, and is the person responsible for determining what gets listed on the Form 470. Mr. Metzler has never received any type of monetary gift from Trillion. Mr. Threadgill has no direct involvement in either determining what goes on the Form 470, nor who should be awarded the bids.

We request relief from the decision of the administrator, based upon Mr. Metzler’s above response. We are at a loss to try to explain why USAC felt Callisburg’s response was a valid explanation for the 2009 and 2010 funding years, but not for 2005 and 2008 for the **exact same issue**.

In the event that the FCC does not find our previous response to be persuasive, we request relief from USAC’s decision given the fact that no state or local procurement rules were violated, and at the time (2005 and 2008) no rules were in place by USAC or the FCC concerning receipt of gifts to applicants.

All correspondence and questions should be directed to Chris Webber – contact information below.

Sincerely,

A handwritten signature in cursive script that reads "Chris Webber".

Chris Webber

CRW Consulting

(p) 918.445.0048

(f) 918.445.0049

info@crwconsulting.com

PO Box 701713

Tulsa, OK 74170

ATTACHMENT A

Date: June 15, 2010

Don Metzler
Callisburg Independent School District
(940) 665-9930
(940) 612-4196
Application Number(s): 662878, 721400

Response Due Date: 6/30/10

We are in the process of reviewing Funding Year 2009 and FY 2010 Form(s) 471 to ensure that they are in compliance with the rules of the Universal Service program.

Funding Year 2009 Application 662878, FRNs 1810198, 1810192 and Funding Year 2010 Application 721400, FRNs 1956812, 1956815, and 195818 will be denied for the following reasons:

Based on the documentation that has been provided to USAC, the entire Funding Request Numbers (FRNs) 1810198, 1810192, 195812, 195815, and 195818 will be denied because Callisburg Independent School District did not conduct a fair and open competitive bidding process. The Form 470 (No. 703210000685117) associated with these FRNs was posted on September 19, 2008 and the Contract Award Date was December 19, 2008.

- The documentation provided indicates that Jeff Threadgill (Callisburg) accepted meals from Trillion prior to the process Callisburg conducted to select a service provider to provide the goods and services that were included in the posted Form 470. Specifically, Trillion has provided documentation for the following meals that were accepted and attended by Jeff Threadgill. On February 5, 2008, Jeff Threadgill attended the Trillion Customer Dinner at the Moonshine Patio Bar and Grill in Austin, Texas. According to Trillion documents, the total cost of the dinner was \$686.45 (\$38.13/person). On May 2, 2008 Jeff Threadgill and Jeff Meadows (Trillion) had lunch. The price was \$68.62 (\$34.31/person). The meals' values exceed the federal gifts standards of \$20/person/occasion not to exceed \$50/person/per calendar year. . The meals occurred in the months prior to Callisburg's posting of its Form 470 (Application No. 703210000685117) on September 19, 2008 and subsequent award of the contract to Trillion on December 19, 2008. Based on this information, it appears that you did not conduct a fair and open competitive process, free from outside influence. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.
- The documentation also indicates that Jeff Threadgill and Don Metzler (Callisburg) engaged in meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in January 2008 through the award of the six-year contract to Trillion in December 2008. Based on the documentation provided to USAC, these discussions do not appear to be general marketing discussions, but rather show that Callisburg provided Trillion with inside information regarding its needs and details about their procurement process, that Trillion influenced the

procurement process by providing input into Callisburg's Request for Proposal (RFP) and FCC Form 470 to ensure that Trillion would be awarded the contract.

Specifically, in addition to the dinner and lunch meetings discussed above, on July 29, 2008, Jeff Threadgill sent Chuck Browning an email requesting information about Trillion's proposal to add T1s. On August 5, 2008, Andy Pilarcik (Trillion) scheduled a meeting with Jeff Threadgill on August 13, 2008. This email also referenced a lunch that was previously shared between Pilarcik and Threadgill. On August 6, 2008, Chuck Browning sent Jeff Threadgill a "Pre-Design and Good Faith Estimate for Callisburg." This is a very detailed WAN system upgrade proposal for the school district and also contained the price list for Trillion's services. On August 13, 2008, Jeff Threadgill, David Jolly (Trillion) and Andy Pilarcik (Trillion) met to discuss Trillion's proposal for the WAN upgrade for Callisburg. On September 9, 2008, Chuck Browning scheduled a meeting with Jeff Threadgill on September 16, 2008 to "catch up with you [on] how things are going." On September 19, 2008, Callisburg posted its Form 470.

Subsequent to the filing of the Form 470, Trillion and Callisburg continued to meet and discuss items related to the bid. On October 16, 2008, Jeff Threadgill requested whether an additional T1 line could be added for the district. Chuck Browning responded and stated that he would provide a full proposal by tomorrow and would call Jeff that afternoon. On November 6, 2008, Jeff Threadgill forwarded Chuck Browning information about the number of phones needed about Callisburg's LAN switches and questioned whether they were VoIP capable. On November 19, 2008, Chuck Browning forwarded Don Metzler (Callisburg) an amendment to the Trillion contract in order to add an extra T1 line. On December 1, 2008, David Jolly (Trillion) sent Don Metzler a "Trillions Mini prop to Callisburg" and noted that Chuck or he would be in touch tomorrow or on Wednesday to review. On December 5, 2008, Chuck Browning scheduled a conference call with Don Metzler to discuss Trillion's proposals on December 9, 2008 at 11 am. On this same day, December 5, 2008, Don Metzler sent Chuck Browning (Trillion) and CRW Consulting an email that stated: "I want us to be on the same page with regards to site locations listed on 470 forms, contracts, etc. The four site locations should be . . . I hope this help us avoid possible problems with the SLD in the future." On December 8, 2009, Chris Webber (CRW Consulting) confirmed with Don Metzler and Chuck Browning that these four entities will appear in block 4 of the application. On December 9, 2008, Callisburg and Trillion had a conference call to discuss Trillion's proposals. Also on December 9, 2008, Chuck Browning sent Don Metzler an email noting how much Trillion values its relationship with Callisburg and that the paperwork that was discussed during the call that day was also attached for his review. The contract was awarded to Trillion on December 19, 2008. (See Callisburg.CB. attachment.)

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) ("Ysleta Order"); See also *Request for Review of Decisions of the Universal*

Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish). Applicants cannot reveal to one prospective service provider information they do not provide to all. See Caldwell Parish, ¶ 16. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/si/applicants/step03/run-open-fair-competition.aspx>.

If the entire FRNs should not be denied and you have alternative information, please provide the supporting documentation. We are including copies of the above referenced emails and meeting confirmations for your review.

Additionally, please answer the following questions so that we may complete our review.

You have indicated in your response, "The district staff did not receive and is not aware of any meal, entertainment, or trip offered or provided by Trillion officers/employees." However, Trillion Partners, Inc. has provided documentation showing that on February 10, 2005, Karla Burkholder (Callisburg) attended a dinner hosted by Trillion during the Texas Computer Education Association trade show at Carmelo's Italian Restaurant in Austin, Texas. The total cost of this dinner was \$384.02 (\$64.00/person). Trillion also provided documentation regarding a breakfast on October 14, 2005 that was attended by Karla Burkholder (Callisburg) for \$26.41 (\$13.20/person). Trillion provided documentation for lunch on October 22, 2007 with Jeff Threadgill for \$27.78 (\$9.26/person). Also Trillion provided receipts for the meals discussed above that Jeff Threadgill attended on February 5, 2008 and May 2, 2008. Please explain the discrepancy in your response and the documentation Trillion has provided. (See Callisburg.Meals document.)

During our review of Trillion and your documentation, it appears that Andy Pilarcik (Trillion) invited Jeff Threadgill (Callisburg) to attend Trillion's VETC conference on June 24-25, 2008 in Austin, Texas. Please confirm whether Jeff Threadgill attended this event and if so, please indicate who paid for the trip expenses and provide documentation regarding this trip. Please also confirm whether any other Callisburg employee was offered or attended one of Trillion's VETC conferences and provide any related documentation. (See attached Callisburg.VETC.Emails attachment).

You have **15 days** to respond to this request. Your response is due by the close of business June 30, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment and we will perform the denials described at the beginning of this letter.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

ATTACHMENT B

CALLISBURG INDEPENDENT SCHOOL DISTRICT

148 DOZIER ST.

CALLISBURG, TX 76240

Donald L. Metzler

Director of Curriculum and Instruction

940-612-4196 Ext. 411

940-668-2986 (Fax)

June 25, 2010

Pina Portanova
USAC, Schools and Libraries Division

RE: June 15, 2010 Letter
Application Number(s): 662878, 721400

This letter constitutes our response to your letter dated 6/15/2010 from Pina Portanova and includes a detailed description of the facts surrounding the competitive bidding issues identified in your letter. We disagree with USAC's apparent decision to deny funding Year 2009 Application 662878, FRNs 1810198, 1810192 and Funding Year 2010 Application 721400, FRNs 1956812, 1956815, and 195818. I believe that FRN 195818 is a typo, and should instead be listed as FRN 1956818. We understand that USAC must work to prevent fraud, waste and abuse in the program, and is limited by the guidance provided by the Federal Communications Commission. We believe, however, that a detailed description of the facts will show that there was no evidence of collusion between the district and Trillion.

Callisburg Independent School District is accused of not conducting a fair and open competitive bidding process with regards to The Form 470 (No. 703210000685117) associated with FRNs posted on September 19, 2008 based on four issues.

The first issue (the first bullet point in the letter) deals with two meals attended by Jeff Threadgill on February 5, 2008 and May 2, 2008. Mr. Threadgill did attend these two meetings and we agree that he did receive these meals. The USAC letter states, "...based on this information, it appears that you did not conduct a fair and open competitive bidding process." Regardless of the issues discussed during those two meals, the receipts provided by Trillion shows that the two meals totaled (per-person) \$72.44. We absolutely disagree that such a relatively small amount in any way influenced our competitive bidding process.

In addition, we take issue with the inherent assumptions that Mr. Threadgill has control over the selection of a service provider to provide goods or services that were posted in the Form 470 referenced above and that conversations about the upcoming posting of the Form 470 occurred.

Mr. Threadgill serves the district as the Network Manager. He is not the person who makes final decisions with regards to awarding contracts. Mr. Donald L. Metzler controls the technology budget, scores bids received as the result of the Form 470 and makes final recommendations to the Superintendent of Schools. Mr. Metzler was listed as the contact person on the Form 470, and is the person responsible for determining what gets listed on the Form 470. Mr. Metzler has never received any type of monetary gift from Trillion. Mr. Threadgill has no direct involvement in either determining what goes on the Form 470, nor who should be awarded the bids.

USAC seems to ignore the fact that Trillion had been providing services to the district (was an incumbent service provider) at least since 2005. In fact, the district was funded in 2005 for Trillion's services. Of course, as normal course of business, incumbent service providers will often make contact with customers to determine the status of their business relationships and inquire about the services provided. Mr. Threadgill was invited to

attend a Trillion Customer Dinner on February 5, 2008. Mr. Threadgill reported to me that Trillion did not make any presentations about their services or future services. A Trillion representative, Bear Poth, welcomed the group of school personnel and thanked them for their hard work. Mr. Threadgill reported that the evening was spent talking with other school district personnel about technology issues within the state and ongoing efforts to improve technology instruction. Mr. Threadgill reported to me that there was no discussion with any Trillion representative about future needs of Callisburg Independent School district.

The second dinner meeting Mr. Threadgill attended (held on May 2, 2008) was with Andy Pilarcik, not Jeff Meadows. Mr. Threadgill has never met Jeff Meadows. This was not a planned meeting. Mr. Threadgill was attending a morning training session at the Education Service Center XI in Ft. Worth, Texas. Mr. Pilarcik, who is the Trillion area representative ran into Mr. Threadgill and invited him out to lunch. Again, the upcoming Form 470 was not discussed. Callisburg Independent School District was experiencing serious bandwidth and connectivity issues with the current system. There existed an immediate need for an additional T-1 line and repair to network switches provided by Trillion. These were items that needed to be done over the summer. The Callisburg Independent School District was already under contract for services with Trillion pertaining to the network switches, and had an immediate need to add additional bandwidth. The discussion about the additional T1 line was NOT an E-rate discussion, the district planned to implement additional bandwidth as soon as possible and incur the full cost of the additional bandwidth.

The second issue indicates that the school district's conversations with Trillion, starting in January, 2008 and following through the awarding of a new five-year contract in December, 2008 were all tied to providing Trillion with an unfair advantage in the bidding process. The school district disputes this conclusion. Callisburg Independent School District was already under contract with Trillion to provide internet access and WAN services. Until the posting of the Form 470 on September 19th, 2008 every email presented was actually an ongoing conversation we were having with Trillion about the overloaded internet system the district had in place. We were talking with our provider about methods to improve the services we were currently being provided. Every conversation Mr. Threadgill and Mr. Metzler had with Trillion was with regards to making immediate changes (at school district expense) to improve our capacity to provide technology to the students and staff of Callisburg Independent School District. They were occurring because of a real-time issue that needed attention and had nothing to do with any future contracts/services. We believe very strongly that we have a right to seek improvements to our system in a timely fashion. Every detail discussed was in regard to finding immediate solutions that the school district could afford to make. Merely referencing on-going conversations with an incumbent service provider does not provide evidence of collusion or bid rigging. In fact, USAC has not identified any deficiency in our Form 470, nor (oddly enough) has USAC requested copies of bids received or bid evaluation sheets to demonstrate a proper bidding process. As our consulting firm, CRW Consulting has confirmed that the 470 filed was approximately the same as the other 190 Form 470s filed by CRW Consulting for that program year, and that it did not vary in any way from a typical 470 filing.

As an aside, we contend that of course every incumbent service provider has "inside information" that other potential vendors did not. Our long distance provider has over five years of billing history that would allow them to produce the best long distance package based upon past usage that would not be immediately available to other potential bidders. Similarly, Trillion would have had detailed "inside information" about our network, which, in fact, is partially leased from Trillion. They know exactly what switches are on premises necessary for WAN connections, how easy they are to service/configure, where the Network Operating Center is located, and other detailed information about the reliability of our network. Does this indicate a pre-existing relationship? Of course. Does it preclude a fair and open competitive bidding process? Of course not.

USAC cites conversations that happened between Trillion and Callisburg after the filing of the Form 470, as if this is evidence of some sort of improper "information sharing." It is exactly the purpose of the Form 470 to generate interest and questions on the part of Service Providers to make accurate bids to the district.

Conversations about "what switches are VoIP capable" are exactly the types of questions vendors would need to have answered in order to make a reasonable proposal.

In addition, we, as a public school district are subject to the Public Records Act. Any potential vendor could have filed a request with the district to obtain copies of emails, contracts, and any other information exchanged between a school district employee and a vendor. ALL of the material referenced by USAC was available to any interested party via a Public Records Act.

The third issue presented deals with emails between Mr. Threadgill and Trillion personnel with regards to the addition of T-1 lines. These conversations were tied to finding an immediate resolution to the problems discussed in the previous paragraph. The school district needed to add increased capacity to receive information from the world wide web and move it between the two campuses before the start of another school year. We could not delay these upgrades. The school district sought information about possible costs (from our current provider, Trillion) so we budget for them in the upcoming school year budget. We reviewed several different levels of service and choose the one we could afford at the time. This was the addition of one T-1 line. In fact, the "Preliminary Design & Good Faith Estimate" emailed to Mr. Threadgill from Chuck Browning on 8/6/2008, in the very first paragraph indicates:

It is our understanding that your district is not seeking a formal proposal and that you are requesting this information purely as a tool to assist you with your budget planning efforts...the enclosed information is not a binding offer, is not a detailed, formal proposal, and is not a response to any request for proposals.

Trillion never suggested nor instructed any employee of the district when to file, or what to include on the Form 470. In fact, allowing generic pricing requests from Applicants to incumbent service providers reduces "encyclopedic Form 470s" that request all possible services, with no possible way for the Applicant to pay for them (or in this scenario, allows the 470 to be more realistic, ensuring that the district is not filing for an amount of bandwidth that is outside of its budgetary capacity).

Public schools in Texas are under extreme pressure to provide on-line testing, streaming capabilities for classrooms, and conducting business with the Texas Education Agency on-line. Almost every financial and accountability issue handled by schools in Texas is done on-line. Schools have to have adequate internet access and bandwidth capacity to meet these demands. Schools need to have flexibility to make upgrades when warranted.

The fourth issue presented deals with three separate items. The first part of the paragraph deals with conversation between Callisburg Independent School District representatives and Trillion representatives in regards to an additional T-1 line, a VoIP phone system, and Callisburg's LAN switches. The additional T-1 line is the same line discussed in the previous paragraph. Again, we contend that this is a conversation to improve the system based on the current contract in place and not a conversation about a future Form 470. The school district had started building a new high school in 2008. Cost overruns caused several items to be pulled out of the original plan. One of these was the installation of a new district-wide phone system. Again, the timing of this issue calls attention to our intent. Callisburg Independent School District was having conversation with a current vendor, Trillion, to obtain cost estimates for this system so the district could plan for future budget needs. The conversations about LAN switches is an offshoot of the conversations about VoIP. The VoIP system requires different switches to operate optimally. Again, the district needed to be able to obtain cost estimates in order to formulate a plan for implementation.

The second part of the fourth issue deals with conversations between Chuck Browning (Trillion), Don Metzler (Callisburg), and Chris Webber (CRW Consulting) with regard to site locations listed on the Form 470. These conversations were necessary because of a mistake made by Trillion the previous year with the names of the

four sites on the application which resulted in Callisburg Independent School District losing e-rate funding for two sites because their addresses did not match the Form 470 filed that year. The four sites had not changed. Trillion changed their system of identifying locations and it did not match. The school district was not notified by Trillion of this change until after we received notification from USAC that funding for the two sites was being disallowed. The school district did file an appeal of the decision to deny funding for the two sites and still awaits a decision from USAC. The school district contends that all of these conversations were an attempt to make sure Trillion and the school district had the same and correct information with regards to site locations.

The third part of fourth issue deals with a conversation held between Callisburg and Trillion on December 9, 2008 to discuss Trillion's proposals. Callisburg Independent School District posted their Form 470 (703210000685117) on September 19, 2008. The first allowable contract date for the school was October 17, 2008. All bid proposals were evaluated and scored between November 12, 2008 and November 24, 2008. The conversations held on December 9, 2008 were to finalize terms of the Trillion contract and were held long after the allowable date to award and sign contracts and after all bids had been evaluated and scored. We do not see any violation.

Additionally, you asked the school district to respond to several questions found on page 3 of your letter. These items deal with the school district responding that they had not received "any meal, entertainment, or trip offered or provided by Trillion". You provided documentation of such events occurring. Karla Burkholder resigned her position with Callisburg Independent School District on June 27, 2007 and was not available to question concerning this issue. Mr. Threadgill did not attend the VETC Conference referenced in the paragraph. In fact, no one from Callisburg Independent School district attended that conference.

Although USAC has not requested additional competitive bidding information, in order to further demonstrate our compliance with competitive bidding rules, we are enclosing all bids received for Trillion-awarded contracts, as well as copies of our bid evaluation sheets.

If you have any questions relating to this matter, please contact our consultant, Chris Webber, using the information below.

Sincerely,

Don Metzler & Chris Webber

Contact Info for Chris Webber:
CRW Consulting
PO Box 701713
Tulsa, OK 74170
918.445.0048
chris@crwconsulting.com